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APR 28 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Application of SBC Communications Inc.,)
Southwestern Bell Telephone Company,) CC Docket No. 97-121
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell)
Long Distance for Provision of In-Region)
InterLATA Services in Oklahoma)

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby responds to the Federal Communications Commission's ("Commission") Public Notice¹ requesting comments on the Motion of the Association for Local Telecommunications Services ("ALTS")² to dismiss SBC Communications Inc.'s ("SBC") Application to provide interLATA services in Oklahoma.³

SBC states it has complied with Section 271(c)(1) of the Communications Act by the fact that it has executed an interconnection agreement with Brooks Fiber, which is providing service via its own facilities to both business and residence customers, thus satisfying the requirements of Section 271(c)(1)(A). SBC further

¹ Public Notice, ALTS's Motion To Dismiss SBC Communications Inc.'s Application For Section 271 Authorization To Provide In-Region, InterLATA Service in the State of Oklahoma, DA 97-864, rel. Apr. 23, 1997.

² Motion to Dismiss and Request for Sanctions by the Association for Local Telecommunications Services, filed Apr. 23, 1997 ("Motion to Dismiss").

³ Brief in Support of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, filed Apr. 11, 1997 ("SBC Brief").

states that it has in effect in Oklahoma a Statement of Terms and Conditions, so that it has met the requirements of Section 271(c)(1)(B), if the Commission should determine that it has received no interconnection request that would bar such a filing.⁴

ALTS has moved to dismiss SBC's Application, claiming that Brooks Fiber provides no residence service in Oklahoma.⁵ U S WEST has no information bearing on that issue and thus will not comment on it. ALTS also claims, however, that SBC may not qualify to provide in-region interLATA services by meeting the requirements of Section 271(c)(1)(B) "[b]ecause interconnection requests have been filed in Oklahoma."⁶ Though ALTS could be correct as to SBC in Oklahoma,⁷ it has put forward an erroneous and unsupportable interpretation of Section 271(c)(1). The Commission must reject that interpretation.

Section 271(c)(1) provides two means by which a Bell Operating Company ("BOC") may qualify to provide in-region interLATA services. A BOC satisfies "Track A" (Section 271(c)(1)(A)) once it is providing, pursuant to approved interconnection agreements, access and interconnection to its network facilities to one or more competing providers of local service, who provide both residence and business service "predominantly over their own telephone exchange service

⁴ SBC Brief at 6-7.

⁵ Motion to Dismiss at 2-3.

⁶ Id. at 4.

⁷ ALTS has misstated SBC's position regarding its Statement. SBC claims to be able to rely on the Statement only if the Commission should find that it has

facilities.”⁸

If “no such provider has requested the access and interconnection described in [Section 271(c)(1)(A)],” a BOC can satisfy “Track B” (Section 271(c)(1)(B)) by having in effect an approved “statement of the terms and conditions that the [BOC] generally offers to provide such access and interconnection.”⁹ The Track B alternative is available to a BOC only if it has not received a request (within a specified time period) that would satisfy Track A.

ALTS argues, however, that any request for interconnection derails Track B, requiring the BOC to rely solely on Track A. The Act plainly says otherwise. It permits a BOC to utilize Track B so long as it has not received an interconnection request “described in [Section 271(c)(1)(A)],” which is –

access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers . . . [which is provided] either exclusively over [the competing providers’] own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.¹⁰

A request for interconnection (or an actual interconnection agreement) not meeting these criteria does not preclude the use of Track B. That is, if a competing provider seeks interconnection solely to serve business customers, or to serve solely by means of reselling the BOC’s services, the request would not be for “access and

received no request for interconnection that would bar such reliance. (SBC Brief at 6-7).

⁸ 47 U.S.C. § 271(c)(1)(A).

⁹ 47 U.S.C. § 271(c)(1)(B).

interconnection described in [Section 271(c)(1)(A)]” and would not preclude the use of Track B.¹¹

The Conference Committee described the purpose for permitting a BOC to base an interLATA application on a Statement if the BOC does not receive a request from a qualifying Section 271(c)(1)(A) competitive provider:

New section 271(c)(1)(B) also is adopted from the House amendment, and it is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA service market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market.¹²

Under ALTS’ interpretation, if a BOC signs interconnection agreements with competing local providers, the BOC is precluded from using Track B, even if none of the competing providers satisfies Track A. In that situation, the BOC would be at the mercy of its local competitors, unable to satisfy either Track unless and until a competitor chooses to provide service qualifying under Track A. Congress implemented Track B to prevent this very occurrence.

Legislative history supports this conclusion. During House floor consideration of H.R. 1555, Congressman Tauzin, a member of the House Commerce Committee, gave several examples of how Section 271(c)(1)(A) and

¹⁰ 47 U.S.C. § 271(c)(1)(A).

¹¹ In the instant case, for example, Brooks Fiber indicates that it is serving a handful of residence customers, by reselling SBC’s local service, on a “test” basis. It gives no indication (at least in the papers filed in this proceeding) whether it intends ever to serve residential customers, using either wholly or predominantly its own facilities, and if so, when. If the state commission should determine that Brooks Fiber has no intention of providing that service, its interconnection agreement with SBC would not derail SBC from Track B.

¹² Conference Report on S.652 at 148.

Section 271(c)(1)(B) are meant to interrelate. One of those examples is instructive:

If a competing provider of telephone exchange with exclusively or predominantly its own facilities . . . requests access and interconnection, but either has an implementation schedule that albeit reasonable is very long or does not offer the competing service because of bad faith or a violation of the implementation schedule . . . either the criteria 245(a)(2)(B)[which became Section 271(c)(1)(B)] has been met because the interconnection and access described in subparagraph (B) must be similar to the contemporaneous access and interconnection described in subparagraph (A) – if it is not, (B) applies.¹³

Congressman Tauzin believed that if the implementation schedule “is very long,” then Section 271(c)(1)(B) is available to the BOC. It must likewise be available if the competing provider has no schedule at all to fulfill all the Track A requirements.

Another of Congressman Tauzin’s examples is even more helpful:

If a competing provider of telephone exchange service requests access to serve only business customers – the criteria in section [271(c)(1)(B)] has been met because no request has come from a competing provider to both residences and businesses.¹⁴

Congress plainly intended not to allow the competing providers to control the BOCs’ ability to enter the interLATA market. Yet that is precisely what ALTS advocates here.

When competitive providers do not meet the eligibility requirements under Track A, Section 271(c)(1)(B) provides an alternative to a BOC to base its application for interLATA relief on a Statement, either because the BOC has not received a request for access and interconnection from a qualifying Section

¹³ 141 Cong. Rec. H8425 at 8458, Vol. 141, No. 129, 104 Congress, 1st Sess. (daily ed. Aug. 4, 1995) (Statement of Congressman Tauzin).

271(c)(1)(A) provider, or because the Section 271(c)(1)(A) providers who have made requests and who have entered into agreements with the BOC have no plan or implementation schedule or offer only vague pronouncements that they “someday” plan to provide exchange service to residence and business customers using their own facilities.

Congress made it clear that unless new entrants who enter into approved agreements with a BOC meet the eligibility requirement under Section 271(c)(1)(A) to provide exchange service to residential and business subscribers, the BOC will not have received qualifying “requests” and the BOC may base its interLATA application on a Statement under Section 271(c)(1)(B).

ALTS claims otherwise, arguing that the last sentence of Section 271(c)(1)(B) establishes the only two circumstances (a competing provider’s failure either to negotiate in good faith, or to comply with its implementation schedule) that permit a BOC to use Track B in the face of interconnection requests. But that presupposes a request “described in [Section 271(c)(1)(A)]” – a phrase ALTS studiously ignores. Absent such a request, the BOC remains fully free to follow Track B.¹⁵

There is little mystery to what ALTS wants here. It wishes to give competitive local entrants the power to deny the BOCs entry into the interLATA

¹⁴ Id.

¹⁵ This also disposes of ALTS’ claim (at 5 n.5) that the inclusion of these conditions precludes any BOC claim of “unfairness” at being precluded from Track B by the existence of interconnection negotiations (or actual agreements) that do not qualify under Track A. ALTS is able to advance this argument only by disregarding the qualifying language in Section 271(c)(1)(B), which plainly allows a BOC to use Track B if existing agreements do not meet the criteria for Track A.

market. Congress provided Track B to the BOCs to avoid just that situation, and the Commission should interpret Section 271(c)(1) consistent with that intent. That is, a BOC is precluded from using Track B only when it has received an interconnection request that meets the criteria of Section 271(c)(1)(A).

The bigger issue here is how to determine whether a particular competitive provider qualifies as a Track A provider, so as to preclude a BOC's use of Track B. Because of the potential for ambiguity in these situations, U S WEST has requested the commissions in some of its states to undertake inquiries of the new entrants, pursuant to the states' audit and investigative authority, to determine the new entrants' plans and timetable for providing telephone exchange service to residential and business subscribers so that there is a factual basis in the record on which the state commission, this Commission, and the BOC can determine whether any of the competitive providers meets the qualifications under Section 271(c)(1)(A), whether the BOC has received a request, and whether the BOC has entered into agreements with qualifying competitive providers sufficient to proceed with an application under Section 271(c)(1)(A), or whether the BOC has no agreements with qualifying competitive providers sufficient to proceed with an application based on a Statement under Section 271(c)(1)(B).

No standards or rules currently exist to guide these decisions. For example, if a competitive entrant has not affirmatively stated an intent to meet all the Track A criteria, do we assume it is not a Track A competitive entrant, or do we presume every competitive entrant will satisfy the Track A criteria absent a showing to the contrary? Is a promise to provide residential service in, say, five years (or


"someday") a sufficient showing of intent to meet the Track A criteria such that the BOC is precluded from Track B? And so on. The state commissions obviously must have a substantial role in resolving these issues, which will frequently require the resolution of disputed issues of fact and interpretations of those facts.

These issues require resolution now. Without standards to guide these decisions, the process will have no consistency to it.

Respectfully submitted,

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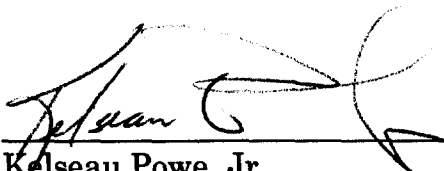
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April 28, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 28th day of April, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via first class U.S. Mail, postage pre-paid, upon the persons listed on the attached service list.


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(CC97121.DK/lh)
Last Update: 4/28/97

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